



Agenda Date: 1/9/02

Agenda Item: 4E

## **STATE OF NEW JERSEY**

### ***Board of Public Utilities***

*Two Gateway Center  
Newark, NJ 07102*

#### **TELECOMMUNICATIONS**

IN THE MATTER OF THE PETITION FOR AN )  
ORDER AUTHORIZING TALK.COM HOLDING )  
CORP., D/B/A THE PHONE COMPANY )  
TO PROVIDE LOCAL EXCHANGE AND )  
INTEREXCHANGE TELECOMMUNICATIONS )  
SERVICES THROUGHOUT NEW JERSEY )

#### **ORDER OF APPROVAL**

DOCKET NO. TE00100767

(SERVICE LIST ATTACHED)

BY THE BOARD:

By letter dated November 17, 1999, Talk America Holding Corp. d/b/a The Phone Company n/k/a Talk America filed a petition with the Board of Public Utilities (Board) requesting authority to provide local exchange and interexchange telecommunications services throughout the State of New Jersey. Talk America responded to a Staff questionnaire by letter dated February 16, 2001 and to Staff interrogatories by letters dated May 7, 2001 and May 18, 2001.

According to the petition, Petitioner was incorporated under the laws of the State of Pennsylvania on May 17, 1989 as Tel-Save, Inc. In 1999 it changed its name to Talk America Holding Corp. Finally, on May 2, 2001 Petitioner submitted an amendment to its petition changing its name to Talk America, Inc. (Petitioner or Talk America). Petition at 2, May 2, 2001 letter. Petitioner's principal offices are located at 6608 Route 202, New Hope, Pennsylvania 18938. Petition at 2.

Petitioner submitted copies of its Articles of Incorporation, Pennsylvania Certificate of Good Standing and its New Jersey Certificate of Authority to Operate as a Foreign Corporation. Petition at 2, Exhibit A, B. According to the petition, Talk America was formed to provide local exchange and interexchange services. Petition at 1. Petitioner advised that Talk America is currently authorized to provide facilities-based local exchange services in Alabama, Arkansas, California, Colorado, The District of Columbia, Florida, Georgia, Kansas, Kentucky Louisiana, Massachusetts, Michigan, Missouri, New York, Nevada, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Virginia and Washington. May 18, 2001 letter. Talk America has not been denied authority to provide telecommunications services in any state. In addition, Talk America has no pending civil, criminal or administrative actions against it.

Talk America advised that it has an interconnection agreement with Verizon New Jersey.

In its petition, Petitioner advised that it seeks authority to provide local exchange and interexchange telecommunications services to residential and business customers throughout New Jersey. Talk America proposes to offer a combination of resale and facilities-based (UNE and UNE-P) arrangements. Initially, all services will be offered via UNE-P arrangements. Customers eventually will be served via UNE facilities connected to the company's own switch.

Petitioner requested a waiver of N.J.A.C. 14:1-5.15 and 14:10-1.16, which require that its books and records be maintained in accordance with the Uniform System of Accounts (USOA) and within the State of New Jersey. Petitioner requested, in the interest of efficiency and to prevent undue burden, its books and records will be maintained in accordance with Generally Accepted Accounting Principles (GAAP). Petition at 6. Petitioner also requests permission to keep all books, records, documents and other writings incident to the conduct of Petitioner's business in the State of New Jersey at Petitioner's corporate offices in New Hope, Pennsylvania. Petition at 7. Petitioner also stated that, upon written notice from the Board, it will produce its books and records at such time and place within New Jersey as the Board may designate and will pay any reasonable expenses for examination of the records.

Petitioner asserted that approval of its petition will further the public interest by expanding the availability of competitive telecommunications services in the State of New Jersey. Petition at 8. Petitioner also asserted that approval of this petition will provide New Jersey customers with access to new technologies and service choices and will permit customers to achieve increased efficiencies and cost savings. Petition at 8.

With regard to its technical and managerial qualifications, Talk America stated that it possesses the technical capability and managerial qualifications to operate and manage its telecommunications operations in the State of New Jersey. Petition at 5. Petitioner submitted the professional biographies of its key personnel who, according to Talk America, are well qualified to execute its business plans and have extensive managerial and technical experience in the telecommunications industry. Petition at 5, Exhibit D.

Petitioner has submitted the form 10k and additional financial statements of its parent, Talk.com, Inc. as evidence of sufficient financing and will be required to submit two years of pro forma income statements and balance sheets for its New Jersey operations prior to approval of its tariff.

The Division of the Ratepayer Advocate, by letter dated December 18, 2000, recommended approval of this petition.

## DISCUSSION

On February 8, 1996, the federal Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56, codified in scattered sections of 47 U.S.C. §151 et seq., was signed into law, removing barriers to competition by providing that:

[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

[47 U.S.C. §253(a)].

Therefore, Board approval of Petitioner's entry into the telecommunications marketplace is required, assuming Petitioner meets all other requirements, including, but not limited to a demonstration of financial, technical and managerial integrity.

In considering this application, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets. 47 U.S.C. §253(a). Approval is also in keeping with the New Jersey State Legislature's decision that it is the policy of the State to provide diversity in the supply of telecommunications services, and its findings that competition will "promote efficiency, reduce regulatory delay and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." N.J.S.A. 48:2-21.16(a)(4); N.J.S.A. 48:2-21.16(b)(1) and (3).

Therefore, having reviewed Talk America's petition and the information supplied in support thereof, the Board FINDS that Petitioner has demonstrated that it possesses the requisite financial, technical and managerial resources, which are necessary to provide telecommunications services in New Jersey. Accordingly, the Board HEREBY AUTHORIZES Petitioner to provide local exchange and interexchange telecommunications services in New Jersey subject to approval of its tariff and submission of its own pro forma financial statements. The Board notes that Petitioner will not be able to provide telecommunications services until a tariff is approved by the Board and the required financial statements have been provided.

Regarding the Petitioner's request for waivers of Board rules, the Board FINDS that the Petitioner has demonstrated good cause why the Board should grant relief from its requirements to maintain its books and records under the USOA and within New Jersey.

Therefore, subject to the Petitioner's continuing responsibility to provide the Board its books and records upon 48 hours notice, and in the manner requested, and to pay to the Board any reasonable expenses or charges incurred by the Board for any investigation or examination of these books and records, the Board APPROVES Petitioner's request for the exemptions from maintaining its books and records in New Jersey and under the USOA.

DATED: 1/10/02

BOARD OF PUBLIC UTILITIES  
BY:

(signed)  
CONNIE O. HUGHES  
PRESIDENT

(signed)  
FREDERICK F. BUTLER  
COMMISSIONER

(signed)  
CAROL J. MURPHY  
COMMISSIONER

ATTEST:

(signed)  
HENRY M. OGDEN  
ACTING BOARD SECRETARY

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**Docket No. TE00100767**

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